



**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

U.S. ENERGY SERVICES, INC.,
a Minnesota corporation,

Plaintiff,

v.

U.S. ENERGY SAVINGS CORP.,
A Delaware corporation,

Defendant.

COMPLAINT

(Jury Trial Demanded)

08CV4763

JUDGE PALLMEYER

MAGISTRATE JUDGE NOLAN

Magistrate Judge: _____

FILED

AUG 21 2008 TC

Aug 21, 2008

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

Plaintiff U.S. Energy Services, Inc. states and alleges as follows:

THE PARTIES

1. Plaintiff, U.S. Energy Services, Inc. ("U.S. Energy Services"), is a corporation organized and existing under the laws of Minnesota, and having its principal place of business at 605 North Highway 169, Plymouth, Minnesota 55441.

2. Defendant, U.S. Energy Savings Corp., ("U.S. Energy Savings") upon information and belief, is a corporation organized under the laws of Delaware and having a principal place of business at 8600 West Bryn Manor, Suite 440N, Chicago, Illinois 60631.

JURISDICTION

3. This pleads causes of action for infringement and unfair competition arising under 15 U.S.C. §§ 1051 – 1127 and Minnesota state law. This Court has jurisdiction under 35 U.S.C. §§ 1331 and 1332.

COUNT I

FEDERAL SERVICE MARK INFRINGEMENT

4. Plaintiff uses U.S. ENERGY SERVICES as a service mark in commerce for management of energy services for natural gas, electricity and coal. Plaintiff has used the mark U.S. ENERGY SERVICES continuously in commerce since at least as early as March 1993.

5. Plaintiff is the owner of United States Service Mark Registration No. 3,000,171 for the mark U.S. ENERGY SERVICES and design. Plaintiff has used said mark continuously in interstate commerce since as early as March 1993. A true and correct copy of the Registration No. 3,000,171 is attached hereto as Exhibit A.

6. Defendant has filed United States Service Mark Application Serial No. 76/586,130, for the mark U.S. ENERGY SAVINGS and design for services in the field of natural gas and electricity contracts. A true and correct copy of said application is attached hereto as Exhibit B.

7. Upon information and belief, Defendant is using the words U.S. ENERGY SAVINGS without design as a service mark in connection with conducting its business. Upon information and belief, Defendant advertises the mark U.S. ENERGY SAVINGS in this judicial district.

8. Defendant's use of the words U.S. ENERGY SAVINGS so resemble Plaintiff's mark U.S. ENERGY SERVICES as to be likely, when applied to the services of Defendant, to cause confusion or mistake, or to deceive customers resulting in damage or detriment to Plaintiff.

9. Plaintiff is aware of several instances of actual confusion. Plaintiff has been contacted in this judicial district by persons who indicated that they believed they were contacting Defendant.

10. Defendant has used a mark confusingly similar to Plaintiff's service mark in connection with the advertising, promotion, and/or sale of goods and services identical to or closely related to the services of the Plaintiff without the consent of the Plaintiff in a manner which is likely to cause confusion, to cause mistake, or to deceive as to source or origin among purchasers and/or users of those services.

11. Defendant's actions constitute trademark infringement under 15 U.S.C. § 1114.

12. Plaintiff has been damaged by the actions of Defendant in an amount yet undetermined but believed to be in excess of \$75,000.00. If the acts of Defendant are allowed to continue, Plaintiff will continue to suffer irreparable injury for which it has no adequate remedy of law.

COUNT II

FEDERAL UNFAIR COMPETITION

13. The cause of action set forth herein arises under the Lanham Act of the United States, 15 U.S.C. §§ 1051 – 1127.

14. Plaintiff repeats and realleges paragraphs 1-13.

15. Defendant is engaging in unfair competition with its advertising and use of U.S. ENERGY SAVINGS. Defendant's actions have falsely implied an association, sponsorship or endorsement of their products or services by Plaintiff, in violation of Plaintiff's rights.

16. Defendant's actions constitute a false designation of origin and misrepresentation in violation of 15 U.S.C. § 1125(a), and constitute dilution of Plaintiff's mark in violation of 15 U.S.C. § 1125(c)(1).

COUNT III

STATE UNFAIR COMPETITION

17. The cause of action set forth herein arises under Minnesota's law of unfair competition. Jurisdiction is founded upon 28 U.S.C. §§ 1332 and 1338 or, alternatively, under supplemental jurisdiction as stated in 28 U.S.C. § 1367 or upon principles of pendent and ancillary jurisdiction.

18. Plaintiff repeats and realleges the foregoing paragraphs 1-17.

19. Defendant's activities complained of constitute infringement of Plaintiff's statutory and common law rights in the State of Minnesota, and unfair competition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff U.S. Energy Services, Inc. prays for the following relief:

- A. A judgment that Defendant has infringed United States Service Mark Registration No. 3,000,171;
- B. A judgment that Defendant has infringed upon Plaintiff's service mark rights in the mark U.S. ENERGY SERVICES;
- C. Preliminary and permanent injunctions enjoining and restraining Defendant, its officers, directors, agents, servants, employees, attorneys and all others acting under or through them from using U.S. ENERGY SAVINGS in connection with services in the field of natural gas and electricity;

D. Preliminary and permanent injunctions enjoining and restraining Defendant, its officers, directors, agents, servants, employees, attorneys and all others acting under or through them from directly infringing or inducing or contributing infringement, including indemnifying other infringements of United States Mark Registration No. 3,000,171;

E. A judgment and order requiring Defendant to pay damages, with interest and costs, and including any appropriate enhanced damages; and

F. Such other and further relief as this Court may deem just and equitable.

Respectfully submitted,

Dated: August 20, 2008

U.S. ENERGY SERVICES, INC.

By its attorneys



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Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 3,000,171

United States Patent and Trademark Office

Registered Sep. 27, 2005

**SERVICE MARK
PRINCIPAL REGISTER**



U.S. ENERGY SERVICES, INC. (MINNESOTA CORPORATION)
1000 SUPERIOR BLVD., SUITE 201
WAYZATA, MN 553911810

THE MARK CONSISTS OF STYLIZED COMBINATION OF UPPER CASE LETTERS "U" AND "S" TO FORM ONE SYMBOL, TOGETHER WITH THE WORDS "U.S. ENERGY SERVICES".

FOR: MANAGEMENT OF ENERGY SERVICES FOR NATURAL GAS, ELECTRICITY AND COAL, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

SEC. 2(F).

FIRST USE 3-1-1993; IN COMMERCE 3-1-1993.

SER. NO. 76-600,115, FILED 7-1-2004.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE SERVICES, APART FROM THE MARK AS SHOWN.

WILLIAM BRECKENFELD, EXAMINING ATTORNEY

Applicant: U.S. Energy Savings Corp.,
a Delaware corporation

Business Address and Situs: President's Plaza
8600 West Bryn Manor, Suite 440N
Chicago, Illinois 60631

Date of first use: February 2004

Date of first use in interstate commerce: February 2004

Goods: Retailing of natural gas and retailing of
electricity contracts to residential, small to
mid-size commercial and small industrial
customers in Int. Class No. 39.

04-12-2004

04-12-2004
U.S. Patent & TMO/O/TM Mail Rept DL #87



U.S. ENERGY
SAVINGS CORP.

U.S. Patent & TMO/O/TM



76586130

76586130

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

04/15/2004 GWLSON1.00000005 76586130.

01 FC16001

335.00 0P



Phillips Lytle LLP

Box NEW APP
FEE

April 8, 2004

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

We enclose herewith for filing, an application of U.S. Energy Savings Corp. to register its mark U.S. ENERGY SAVING CORP. & DESIGN on the Principal Register in International Class No. 39 for "retailing of natural gas and retailing of electricity contracts to residential, small to mid-size commercial and small industrial customers", which application is accompanied by one (1) specimen or facsimile showing how the mark is currently used, and our firm check for \$335.00 in payment of the statutory filing fee.

However, in the event that this or any other fee incurred in connection with this application is found to be due and/or deficient, kindly charge any such additional fee or deficiency to our Deposit Account No. 19-3320.

Respectfully submitted,

PHILLIPS LYTLE LLP

By Tara Hart-Nova
Tara Hart-Nova, Esq.

THNpi
Enclosures
1377793.01

Tara Hart-Nova

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Asst. Commissioner for Trademarks

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April 8, 2004

CERTIFICATE OF MAILING

I certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Box NEW APP, FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, this 8th day of April, 2004.

PHILLIPS LYTTLE LLP

By Tara Hart-Nova
Tara Hart-Nova, Esq.
Dated: April 8th, 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: **U.S. ENERGY SAVINGS CORP. AND
DESIGN**

Int. Class No.: 39

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

Applicant: U.S. Energy Savings Corp.,
a Delaware corporation

Business Address and Situs: President's Plaza
8600 West Bryn Manor, Suite 440N
Chicago, Illinois 60631

**APPLICATION TO REGISTER BASED UPON
ACTUAL USE PURSUANT TO 15 U.S.C. §1051(a)**

The above-identified applicant has adopted and is using the mark shown in the accompanying drawing for: retailing of natural gas and retailing of electricity contracts to residential, small to mid-size commercial and small industrial customers in Int. Class No. 39; and requests that said mark be registered in the United States Patent and Trademark Office in the Principal Register established by the Trademark Law Revision Act of 1988 (15 U.S.C. §1051 *et seq.*)

The mark was first used by Applicant in connection with the goods and services at least as early as February 2004; was first used by Applicant in commerce in connection with the goods and services at least as early as February 2004, and is now in use in such commerce with the goods and services.